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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

JAMES RUHLMANN and ERIC SAMBOLD,

**Plaintiffs,**

v.

GLENN RUDOLFSKY, individually and  
KIM D. RUDOLFSKY, individually; and  
HOUSE OF DREAMS KAUAI, INC.,  
a New York Domestic Business Corporation

## Defendants.

CASE NO.: 2:14-cv-00879-RFB-NJK

**EMERGENCY APPLICATION  
FOR ENLARGEMENT OF TIME  
TO SERVE DEFENDANT HOUSE  
OF DREAMS KAUAI, INC., AND  
REQUEST FOR PERMISSION TO  
SERVE BY PUBLICATION**

Plaintiffs respectfully request 60 days additional time to serve Defendant House of Dreams Kauai, Inc., by publication. Service has been attempted seven times and Defendants refusal to cooperate will necessitate service by publication. The 120 days for service expires on November 9, 2016. This Motion is based on the following Points and Authorities.

J.

## **PRELIMINARY STATEMENT**

24 House of Dreams Kauai, Inc. was named as a corporate defendant by the Amended  
25 Complaint filed on August 11, 2016. (Doc. 92). Plaintiffs requested that Defendant Glenn and  
26 Kim Rudolfsky's counsel accept service for House of Dreams Kauai, Inc., since Defendant Glenn  
27 Rudolfsky is the sole corporate officer of House of Dreams Kauai, Inc. The Amended Complaint  
28 filing indicated service should be effectuated by November 9, 2016. (Doc. 92 ). House of

1 Dreams Kauai has been a defendant in this case since June 6, 2014. House of Dreams Kauai was  
2 named as a dba in the original Complaint served on Defendants Glenn Rudolfsky and Kim  
3 Rudolfsky in June 2014.

4 Service of Process was attempted at the office of House of Dreams Kauai, which is the  
5 residence of Defendants Glenn Rudolfsky and Kim Rudolfsky at 2825 Shore Drive, Merrick,  
6 New York. A true copy of the Amended Complaint and Summons was served by Federal  
7 Express and signed for by Defendant Kim Rudolfsky on October 4, 2016. (Doc. 113-3). Kim  
8 Rudolfsky testified at her deposition on October 28, 2016, that she is an employee of House of  
9 Dreams Kauai, Inc., and House of Dreams Kauai, Inc. has an office in the house she owns at  
10 2825 Shore Drive, Merrick, New York.

11 Process servers have attempted service at the Merrick address on seven separate  
12 occasions, September 17, 19 and 21 and again on October 5, 6 and 10, 2016. On five of those  
13 occasions, no one came to the door despite the same two cars being parked in the driveway each  
14 time. See statements of process servers and Affidavit of Attempted Service, Exhibit 1 hereto.  
15 On October 5, 2016, when service was attempted at 2825 Shore Drive, Merrick, New York, a  
16 man spoke to the process server through the closed door. The man said he was not Glenn but hid  
17 himself behind the blinds in the glass door at the front of the house. See Exhibit 2. Plaintiffs are  
18 in the process of serving the Nevada Secretary of State for House of Dreams Kauai, Inc.

19 Plaintiffs require additional time to serve Defendant House of Dreams Kauai, Inc. by  
20 publication. An Affidavit Regarding Due Diligence of Attempted Service of House of Dreams  
21 Kauai, Inc. is being filed concurrently herein.

22  
23 II.

24 **LEGAL DISCUSSION**

25 **A. TIME FOR SERVICE SHOULD BE EXTENDED PURSUANT TO FEDERAL**  
26 **RULE OF CIVIL PROCEDURE 4(m).**

27 The 120 days for service of process under FRCP 4(m) may be extended for good cause.  
28

1 Good cause exists for the extension of the 120 days since Defendant House of Dreams Kauai,  
 2 Inc. is avoiding personal service. The Affidavit of Due Diligence filed concurrently herein  
 3 shows the many service attempts and the Defendants' refusal to answer the door at their home  
 4 which is the business address for House of Dreams Kauai, Inc., registered with the New York  
 5 Secretary of State.

6 Courts have broad discretion to extend time for service under Federal Rule of Civil  
 7 Procedure (4)(m). *Efaw vs. Williams*, 473 F.3d 1038, 1041 (9<sup>th</sup> Cir. 2003). The Supreme Court  
 8 has stated that the 120 time period for service contained in Rule (4)(m) "operates not as an outer  
 9 limit subject to reduction, but as an irreducible allowance." *Henderson vs. United States*, 517 US  
 10 654, 661 (1996). *Bd of Ts of the Construction Trades vs. Safety Sealed Water Systems, LLC*,  
 11 2:15:cv-00180-AOG-VGF (October 9, 2015, D. Nev.)

12

13       **B. FRCP 4 PROVIDES FOR SERVICE BY THE SAME MEANS ALLOWED BY**  
 14 **STATE LAW.**

15 Nevada law allows for service by publication. *Schikore vs. Bank America*, 269 F.3d 956,  
 16 961-962. Rule 4 of the Federal Rules of Civil Procedure governs service of process. Serving a  
 17 corporation is governed by Rule (4)(h). Rule 4 (h) allows for service in the manner prescribed by  
 18 4(e)(1) for serving an individual. Rule 4(e)(1) allows service by following the state law for  
 19 serving a summons in an action brought in courts of general jurisdiction in the state where the  
 20 district court is located or where service is made.

21       Nevada Rule of Civil Procedure (4)(e)(1)(i) authorizes service by publication when the  
 22 proposed defendant resides out of state and avoids service of process. An affidavit of due  
 23 diligence is required and is being filed concurrently herein.

24       Service by Publication in Nevada requires publication once a week for four weeks. NRCP  
 25 (4)(e)(1)(iii). Plaintiffs are respectfully requesting an additional 60 days from November 9, 2016  
 26 to effectuate service by publication on the Defendant House of Dreams Kauai, Inc. Because the  
 27 Defendants Glenn Rudolfsky and Kim Rudolfsky have been aware of the Amended Complaint

1 since August 11, 2016, publication should be allowed at Nevada Legal News.  
2  
3

### CONCLUSION

4 Plaintiffs' request for 60 days additional time to serve Defendant House of Dreams  
5 Kauai, Inc., by publication in the Nevada Legal News should respectfully be granted.

6 DATED this 2<sup>nd</sup> day of November, 2016.

7  
8   
9 ELIZABETH J. FOLEY  
10 601 So. Rancho Drive, Suite A-1  
11 Las Vegas, Nevada 89106  
12 Attorney for Plaintiffs

### CERTIFICATE OF SERVICE

13 Pursuant to Fed. R. Civ. P. 5(b), I certify that on the 2<sup>nd</sup> day of November, 2016, I caused  
14 the document entitled **EMERGENCY APPLICATION FOR ENLARGEMENT OF TIME**  
15 **TO SERVE DEFENDANT HOUSE OF DREAMS KAUAI, INC. AND REQUEST FOR**  
16 **PERMISSION TO SERVE BY PUBLICATION**, to be served by electronically transmitting  
17 the document to the Clerk's Office using the CM/ECF System for filing and transmittal of a  
18 Notice of Electronic Filing.

19  
20   
21 An Employee of Elizabeth J. Foley